

**DEPARTMENT OF AGRICULTURE****Forest Service****RIN 0596-AC45****Forest Service Interim Guidelines for Tribal Forest Protection Act****AGENCY:** Forest Service, USDA.**ACTION:** Notice; request for comment.

**SUMMARY:** On December 13, 2005, the Forest Service issued an interim directive to provide guidance for Tribal Forest Protection Act (TFPA) proposals. This interim directive provides internal administrative direction to guide Forest Service employees in planning, implementing, and monitoring TFPA proposals. The interim directive is issued to Forest Service Handbook (FSH) 2409.19, Renewable Resources Handbook, Chapter 60, Stewardship Contracting, as Interim Directive No. 2409.19-2005-2 and can be found at <http://www.fs.fed.us/spf/tribalrelations/>. This direction was developed to implement the provisions as authorized in Public Law 108-278, Tribal Forest Protection Act. The agency is requesting comment on this interim directive to ensure that the public has the opportunity to comment on the implementation of this new authority. The public's comments will be considered prior to development of final agency policy.

**DATES:** Public input must be received by February 26, 2007.

**ADDRESSES:** Written comments should be addressed to: USDA Forest Service, Office of Tribal Relations, 1400 Independence Avenue, SW., Mail Stop Code 1109, Washington, DC 20250-1109. Public input on this interim directive may also be submitted via facsimile to (202) 205-1773 or by e-mail to [tribal\\_relations@fs.fed.us](mailto:tribal_relations@fs.fed.us). The agency cannot confirm receipt of comments sent via facsimile or e-mail. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments during regular business hours (8:30 a.m. to 4 p.m. Monday through Friday, except holidays) at the USDA Forest Service Office of Tribal Relations, 2nd Floor Central, Sidney R. Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205-1514 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Marsha Butterfield, USDA Forest Service, Office of Tribal Relations, (202) 205-4095.

**SUPPLEMENTARY INFORMATION:** The Tribal Forest Protection Act of 2004 (TFPA) was intended to strengthen Forest Service (FS) and Bureau of Land Management (BLM) agency relationships with federally recognized tribes and to restore forested lands. The TFPA authorizes the Secretaries of Interior and Agriculture to enter into contracts and agreements with tribes to carry out certain projects on FS and BLM-administered lands that will reduce threats to adjacent or bordering tribal lands. A copy of the TFPA and other information on the interim directive can be found at: <http://www.fs.fed.us/spf/tribalrelations>.

**Background**

The TFPA was passed in July 2004 in response to devastating wildfires that crossed from Federal onto tribal lands the prior summer. The TFPA provides a tool for tribes to propose work and enter into contracts and agreements with the FS or BLM to reduce threats on FS or BLM-administered lands adjacent to or bordering on Indian trust land and Indian communities. The Forest Service and BLM coordinated on development of policy to implement the TFPA.

Forest Service policy to implement the TFPA is included with Stewardship Contracting guidance in Forest Service Handbook (FSH) 2409.19, Chapter 60. Draft policy was sent to Regional Foresters for tribal consultation and a comment period from April 25, 2005, to June 25, 2005. Comments were considered during development of the interim directive.

**Description of Interim Directive**

Key points of the policy include:

1. Tribal proposals must focus on National Forest System (NFS) lands that: (a) Border on or are adjacent to tribal forest lands; and (b) pose a fire, disease, or other threat to the Indian trust land or community, or need restoration; and (c) are not subject to some other conflicting agreement or contract; and (d) involve a feature or circumstance unique to the proposing (i.e. treaty rights, cultural, archaeological, historical, or biological).
2. The Forest Service may utilize an array of legal instruments to enter into contracts and agreements with tribes in response to their proposals, including an emphasis on stewardship contracting.
3. To qualify, the Indian land must: (a) Border on or be adjacent to NFS lands; and (b) be in trust or restricted status; and (c) be forested or have grass, brush, or other vegetative cover; and (d) if burned over land, be capable of regenerating vegetative cover.

4. Before initiating a project proposal, tribes are encouraged to meet with Forest Service personnel and other interested stakeholders prior to submitting formal requests to the Forest Supervisor or District Ranger.

5. Within 120 days of a tribe submitting a request, the Forest Service will issue a public notice indicating: (a) Initiation of any necessary environmental review, (b) potential for entering into an agreement or contract with the tribe, or (c) notify the tribe of the denial of their proposal.

6. When the Forest Service evaluates and considers entering into agreements or contracts with tribes under the TFPA, the FS may use a best value basis and give specific consideration to tribally related factors, including: status of the Indian tribe as an Indian tribe; trust status of the Indian tribe's forest land or rangeland; treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal; cultural, traditional, historic affiliations; indigenous knowledge and skills of members of the Indian tribe; landscape and vegetation features; coordination between the tribe and the agencies; and tribal access to the land subject to the proposal.

7. If the Forest Service denies a tribe's proposal to enter into an agreement or contract, the agency will issue a notice of denial to the tribe that identifies specific factors in, and reasons for, the denial, identifies potential corrective courses of action when appropriate, and provides for consultation with the tribe on how to protect the Indian trust land and tribal interests on the Forest Service land. Before a denial is issued, agency personnel may work with the tribes to attempt to make the proposal acceptable.

**Regulatory Certifications****Regulatory Impact**

This interim directive has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. This interim directive would not have an annual effect of \$100 million or more on the economy, nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local Governments. This interim directive would not interfere with an action taken or planned by another agency, nor raise new legal or policy issues. Finally, this interim directive would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this interim

directive is not subject to OMB review under Executive Order 12866.

#### *Proper Consideration of Small Entities*

This interim directive has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this interim directive would not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

#### *Environmental Impact*

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions" that do not significantly affect the quality of the human environment. This interim directive sets forth administrative procedures for implementation of the TFPA and, as such, has no direct effect on Forest Service decisions for land management activities.

#### *No Takings Implications*

This interim directive is limited to establishment of administrative procedures to respond to American Indian and Alaska Natives proposed work projects to enter into contracts and/or agreements with the Forest Service. Projects would conduct land management activities on Forest Service and BLM lands adjacent to Indian trust land and Indian communities.

This interim directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the interim directive does not pose the risk of a taking of private property.

#### *Federalism*

Executive Order 13132, Federalism, requires consultation with State and local officials when planned regulations and other policies have substantial direct effects on the States. This interim directive establishes procedures for the TFPA which will be administered by the Forest Service and implemented by participating Indian tribes. Therefore, the agency has determined that there are no direct effects on the States and no further assessment of federalism implications is necessary.

#### *Consultation and Coordination With Indian Tribal Governments*

In accordance with Forest Service policy and Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, formal consultation was conducted with Indian tribes on development of this new policy in 2005. The draft TFPA policy was sent to regional FS offices, where it was then sent to tribes in their respective regions that have tribal land, rangeland, or tribal communities bordering on or adjacent to NFS land, for consultation with those tribes. A 60-day comment period was provided for the consultation and comment.

#### *Energy Effects*

This interim directive has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed guideline does not constitute a significant energy action as defined in the Executive Order.

#### *Unfunded Mandates Reform*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this interim directive on Tribal governments and the private sector. This interim directive does not compel the expenditure of \$100 million or more by any Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

#### *Civil Justice*

This interim directive has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this interim directive as final, (1) all State and local laws and regulations that conflict with this policy or that would impede full implementation of this policy will be preempted (2) no retroactive effect would be given to this interim directive; and (3) this interim directive would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Dated: November 27, 2006.

**Sally Collins,**

*Associate Chief, Forest Service.*

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**BILLING CODE 3410-11-P**

## **DEPARTMENT OF COMMERCE**

### **Foreign-Trade Zones Board**

#### **Docket 47-2006**

#### **Foreign-Trade Zone 15 - Kansas City, Missouri, Area, Application for Expansion**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign Trade Zone, Inc., grantee of FTZ 15, requesting authority to expand its zone in the Kansas City, Missouri, area, adjacent to the Kansas City CBP port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 14, 2006.

FTZ 15 was approved on March 23, 1973 (Board Order 93, 38 FR 8622, 4/4/73) and expanded on October 25, 1974 (Board Order 102, 39 FR 39487, 11/7/74); on February 28, 1996 (Board Order 804, 61 FR 9676, 3/11/96); on May 31, 1996 (Board Order 824, 61 FR 29529, 6/11/96); on December 8, 1997 (Board Order 934, 62 FR 65654, 12/15/97); on October 19, 1998 (Board Order 1004, 63 FR 59761, 11/5/98); on January 8, 1999 (Board Order 1016, 64 FR 3064, 1/20/99); on June 17, 1999 (Board Order 1042, 64 FR 34188, 6/25/99); on April 15, 2002 (Board Order 1226, 67 FR 20087, 4/24/02); and, on April 20, 2005 (Board Order 1388, 70 FR 22630, 5/2/05).

The zone project to date has consisted of the following sites in the Kansas City area: *Site 1* (5.7 acres, 250,000 sq. ft.) -- Midland International Corporation warehouse facility located at 1650 North Topping St., Kansas City; *Site 1A* (2.76 acres) -- located at 1226 Topping Drive, Kansas City; *Site 2* (64.3 acres, 2.8 million sq. ft.) -- surface/underground warehouse complex located at 8300 NE Underground Drive, Kansas City (includes a site (75,000 sq. ft.) located at 3600 Great Midwest Drive operated by Terminal Consolidation Company); *Site 3* (9,615 acres) -- located within the 10,000-acre Kansas City International Airport facility; *Site 3A* (1 acre, 33,541 sq. ft.) -- located at 10201 N. Everton, Kansas City; *Site 3B* (3 parcels, 384 acres total) -- Kansas City: *Parcel 1* (68 acres) -- within the 330-acre Air World Center Business Park, located at Interstate 29 and 112th Street; *Parcel 2* (155 acres) -- Congress Corporate Center Industrial Park, located at the northwest corner of 112th Street and North Congress; and, *Parcel 3* (161 acres) -- city-owned Harley Davidson Site; *Site 4* (416 acres) -- Carefree Industrial Park,